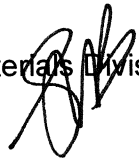


MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

OPERATIONAL MEMO 169-2  
REVISION 3

TO: All Waste and Hazardous Materials Division Supervisors

FROM: George W. Bruchmann, Chief, Waste and Hazardous Materials Division 

DATE: March 2, 2009

SUBJECT: Enforcement Against Disposal of Tires at a Noncompliant Collection Site

Section 16902(1) of Part 169, Scrap Tires, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), requires that scrap tires be delivered only to one of the following: a registered collection site; a location that has legally accumulated scrap tires below the regulatory threshold for qualifying as a collection site; a disposal area licensed under Part 115, Solid Waste Management, of the NREPA; an end-user; a scrap tire processor; or a tire retailer. Section 16902(2) requires that a person who arranges for the removal of scrap tires (i.e., the generator) must do so by using one of the following: a registered scrap tire hauler who is obligated to deliver the tires to a lawful site that is specifically identified in the manifest for the transportation of those tires; a person hauling only a commodity; a retreader hauling only tire casings; or a solid waste hauler. Together, these provisions establish the obligation for both scrap tire haulers and generators to use only sites compliant with Part 169 for the disposal of scrap tires.

This operational memo sets forth a process to be used to support a referral for criminal enforcement against a hauler or generator for disposal of tires at a noncompliant collection site.<sup>1</sup> This process affords notification to haulers and generators when the collection site has formerly operated in compliance with Part 169 and has had commercial arrangements with haulers and/or generators for scrap tire disposal. This process does not apply if tires are disposed of at a site where there is no arguably valid claim of authorized disposal.

1. A collection site shall be considered noncompliant for purposes of this operational memo if it is unregistered<sup>2</sup> and/or determined by the Department of Environmental

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<sup>1</sup>Note that, with the exceptions of a Part 115 disposal area and an end-user, any other lawful destination listed in Section 16902(1) must either maintain less than the number of tires on-site that would qualify it as a collection site or register as a collection site. An end-user that loses its end-user exemption under Section 16904a would automatically be considered a collection site (provided the qualifying number of tires were on-site) and would be required to register as a collection site.

<sup>2</sup>A site is considered unregistered if it has not filed a collection site registration application, its application has been determined to be administratively incomplete (provided the time for submitting a complete application has passed), the registration is denied (for a site that did not have a valid registration in the previous year), or a denial is upheld in a contested case (for a site that was validly registered in the previous year and filed for a contested case on a proposed denial).

Quality (DEQ) to be in violation of the operational requirements of Part 169.<sup>3</sup> A collection site is formally determined by the DEQ to be noncompliant based on the following process:

- a. An inspector who determines that a collection site is unregistered or otherwise in violation of Part 169 will issue a Violation Notice (VN) detailing the failure to register and/or applicable violations<sup>4</sup> and provide a reasonable amount of time<sup>5</sup> to correct the violations. That VN will also state that if the site does not correct all violations within the specified time period, the DEQ will notify known haulers and generators using the site that continued tire disposal at the site may subject those parties to the criminal provisions of Part 169.<sup>6</sup>
  - b. If the violations have not been corrected within the specified time period, the Waste and Hazardous Materials Division (WHMD) District Supervisor will issue a second VN reiterating the continuing violations and provide that the matter may be referred for escalated enforcement. This VN may provide an appropriate time period for correcting the violations prior to enforcement at the WHMD District Supervisor's discretion.<sup>7</sup> However, this VN will also state that the public will be generally notified that the site has been found to be in violation of Part 169 and that any known users of the site will be provided specific notice that further use may subject such persons to criminal penalties. A copy of this VN will be provided to the WHMD, Storage Tank and Solid Waste Section.
2. Subsequent to the issuance of a second VN to the site, the WHMD will direct the public to the Waste Data System (WDS) Web Inquiry System to find out if a site has been determined by the WHMD to be in violation of Part 169.<sup>8</sup> A site will remain on WDS as a noncompliant site until it is determined by the WHMD to be in compliance with Part 169. The WHMD District scrap tire staff and WHMD District Supervisors are responsible for ensuring that WDS is maintained with accurate and timely compliance information for

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<sup>3</sup>Obtaining or maintaining a required bond is considered to be an operational requirement in this context.

<sup>4</sup>Hereafter "violations" refers to both the failure to register and/or any operational violations that exist.

<sup>5</sup>A reasonable amount of time for correcting the violation will depend on the nature of the violation and the surrounding circumstances. In most cases, it is expected this will be in the neighborhood of 10 to 30 days. Sixty days would be necessary to correct those violations listed as "site requirements" for purposes of the bonding exemption for compliant sites; see Section 16903b(3).

<sup>6</sup>This process is not meant to supplant the existing process for denial of a collection site registration application. In the context of a registration denial, the proposed denial (and notice of hearing if applicable) can include the statement described in this paragraph about the potential for notifying haulers and retailers who use the site. In effect, the proposed denial is analogous to the first VN. The DEQ's decision to deny the application would be analogous to the second VN described in the following paragraph. Note, however, that if the site was validly registered in the previous year, the site cannot be determined to be noncompliant **solely because the DEQ considers it unregistered** until administrative hearing rights have been exhausted (i.e., until the time to file for an administrative hearing has passed or until a decision is rendered after an administrative hearing.) The site **could still** be determined to be noncompliant if there are operational violations of Section 16903. In that case, staff could take the further steps described in Items 2 and 3, below.

<sup>7</sup>In the case of a site that has now lost its exemption from bonding under Section 16903b for failure to correct a violation of the "site requirements" within 60 days as required by Section 16903b(3), only ten days is allowed for obtaining a bond as required by that subsection.

<sup>8</sup>The public may access the WDS Web Inquiry System at any time.

March 2, 2009

their facilities. If, for any reason, the public is unable to access the WDS Web Inquiry System, they may contact the appropriate WHMD District scrap tire staff or Scrap Tire Regulatory Program staff in Lansing to determine if a site is in violation of Part 169.

3. The WHMD will provide specific written notice to any known or newly-discovered users that further use of the site may subject that party to the criminal provisions of Part 169.<sup>9</sup> This notice shall be provided both to generators whose tires are taken to the site and to haulers who transport scrap tires to the site. The notice shall state the basis for the determination that the site is not compliant and state that the current status of the collection site can be obtained by using WDS or by contacting the WHMD District Office responsible for the collection site.
4. If, subsequent to such a warning, the WHMD confirms, through an inspection or other reliable information, that a generator or hauler is continuing to use a noncompliant site, the matter may be referred to the DEQ, Office of Criminal Investigations (OCI), for enforcement. A copy of the referral should be provided to the WHMD, Enforcement Section.

Questions about this process should be referred to John Craig, Chief, Enforcement Section.

cc: Milton Scales, OCI  
John Craig, WHMD

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<sup>9</sup>District staff should take reasonable steps to determine whom to notify. For some collection sites, this may entail a simple file search of haulers known to have used the site in the past and who may have listed the site on the current year registration form. For other collection sites used by a large number of haulers or whose client base changes often, such a search need not be conducted. In either case, staff may review manifests at the collection site to determine the names of haulers and retailers who had recently (e.g., three-six months) used the site. Staff may also determine, in the course of a routine inspection, that a hauler or retailer is using the noncompliant collection site. In that case, the hauler or retailer should be formally notified of the consequences of continued use of the collection site through a written notice as described in this paragraph.